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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

IRAQ*

[5 June 1991]

Introduction

1. This third periodic report covers the period from 1 January 1986 to 31 May 1991. In drafting it, the following were taken into account:

(a) The Guidelines adopted by the Human Rights Committee on 27 July 1981 and the Committee's general comments on articles of the Covenant;

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*/ For the initial report submitted by the Government of Iraq, see CCPR/C/1/Add.45, and for its consideration by the Committee see CCPR/C/SR.199, 200, 203 and 204, or Official Records of the General Assembly, Thirty-fifth session, Supplement No. 40 (A/35/40, paras. 119-153). For the second periodic report submitted by the Government of Iraq, see CCPR/C/37/Add.3, and for its consideration by the Committee see CCPR/C/SR.744-SR.748 or Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40, paras. 346-390).

(b) The summary of the discussions that took place during consideration of the second periodic report of Iraq (CCPR/C/37/Add.3) at the Committee's 744th-748th meetings, held on 15-17 July 1987, as contained in the report of the Committee (A/42/40, paras. 346-390);

(c) The Committee's decision of 11 April 1991 requesting the Iraqi Government to submit its third periodic report by 15 June 1991, with particular reference to the implementation of articles 6, 7, 9 and 27 of the Covenant, taking into account the recent events in Iraq.

2. The Committee's decision of 11 April 1991 represents an extraordinary concern on the part of the Committee over the human rights situation in Iraq; it also constitutes an exception to the Committee's established practice of dealing with overdue periodic reports in accordance with rule 69 of its rules of procedure. The Committee has indicated in its annual reports that several States parties have been years late in submitting their reports, but never before has it taken a measure similar to the decision on the report of Iraq (see A/45/40, pp. 160-169). It should be recalled that Iraq did not submit its third periodic report when due because the due date coincided with the promulgation of the new Constitution and the enactment of other laws helping to strengthen human rights in Iraq, including freedom of association and freedom of the press. Recent events in Iraq obstructed these measures thus causing the delay.

3. The exceptional difficulties caused by the war waged by the anti-Iraq coalition forces, which destroyed the country's infrastructure, and sedition and rioting, encouraged by forces beyond Iraqi borders, which paralysed most State organs and various Iraqi governorates, adversely affected human rights in Iraq. Committed to the application of all international conventions on human rights, regardless of the extraordinary destruction, and in pursuit of the dialogue it began with the Committee with the submission of the first and second reports, Iraq hereby submits its report on progress in the implementation of the International Covenant on Civil and Political Rights, highlighting the difficulties which it has encountered.

PART ONE

Political and constitutional developments relevant to human rights since the submission of the second report

4. The second report covered the period ending on 31 December 1985. Between then and the drafting of this third report significant political and constitutional developments have taken place in relation to human rights in Iraq. The armed conflict with Iran continued up to 8 August 1988, when a cease-fire was declared by the Security Council. After the cease-fire, Iraq made intensive efforts to abolish all the measures necessitated by the armed struggle, and to enable citizens to exercise their rights and freedoms without discrimination. All Ministries and Government organs were requested to make an inventory of laws and directives enacted during the war limiting the freedom of citizens, with a view to their abolition. For example, restrictions on travel by Iraqi citizens were abolished on 17 January 1990. The competent authorities drafted a new Constitution for Iraq; it was published in July 1990 and was expected to be put to referendum later in the year. However, the Kuwait crisis and later developments made it impossible to hold this referendum and caused the suspension of the freedom of travel as of 2 August 1990.

5. Security Council resolution 661 (1990) of 6 August 1990 imposed comprehensive economic sanctions on Iraq, adversely affecting the enjoyment of human rights, particularly the right to food and medicine and a decent standard of living. Restrictions on these fundamental rights jeopardized the right to life; hundreds of children died as a result of shortages of milk and vaccines. Because of the close relation between economic, social and cultural rights on the one hand, and civil and political rights on the other, all human rights were adversely affected by the comprehensive economic sanctions imposed on Iraq, which continue to be enforced to date in spite of the removal of the reasons for their imposition and Iraq's compliance with Security Council resolutions.

6. The destruction caused in the war launched by the anti-Iraqi coalition on 17 January 1991 has no precedent in the history of mankind. The war was followed by internal riots instigated by external forces, resulting in destruction and looting of public and private property and Government buildings; the Government, particularly the armed forces were forced to shoulder their responsibilities, restore the authority of the State and re-establish peace. After the cease-fire and restoration of State control over Iraqi territory, in order to rebuild the country after the ravages of war and prior to the promulgation of the new Constitution, the Revolutionary Command Council passed decision No. 83 of 23 March 1991, amending article 61 of the current Constitution. The amendment makes the Cabinet responsible for implementing State policy as established by the President. The Cabinet consists of the Prime Minister, his deputies and the ministers. On 23 March 1991, a presidential decree was issued appointing the Prime Minister and the new Cabinet. On 1 April 1991, the Prime Minister released a statement on the policy of his Cabinet in which he stressed the question of reconstruction, the establishment of democracy and a multi-party system, freedom of association, freedom of the press and the supremacy of the law.

7. All State organs are now working to implement the Cabinet programme. Several committees have been formed to examine wartime laws and regulations with a view to their abolition so that citizens can exercise their rights. The competent authorities, in collaboration with the press association, are examining a new press law. A new law on the freedom of political parties is also being drafted. A series of meetings have taken place between the political leadership of the country and a delegation of Kurdish parties to search for the best formula to promote autonomy in Iraqi Kurdistan. On 19 May 1991, the Revolutionary Command Council adopted a decision abolishing the Revolutionary Court and referring all the cases before it to the ordinary courts. Another decision was issued allowing Iraqi citizens to travel abroad as of 15 May 1991.

8. The above is a condensed account of political and consitutional developments relevant to human rights. These measures will, it is hoped, contribute to better implementation of the Covenant. As regards the bodies responsible for the promotion and protection of human rights, the Cabinet may be considered the body responsible for the implementation of laws, particularly since the Revolutionary Command Council, by decision No. 97 of 7 April 1991, authorized the Cabinet to exercise its responsibilities under the Constitution and the laws and regulations in force. Before the last constitutional amendments these responsibilities were exercised by the Office of the President.

9. The judiciary continues to be the competent authority for the protection of human rights, as stated in the second periodic report. In our comments under articles 7 and 14 of the Covenant, we shall review developments in the functions of the judiciary.

10. As far as non-governmental organizations are concerned, the Iraqi Human Rights Association invited members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to visit Iraq in order to acquaint themselves with the human rights situation in Iraq and to visit Kurdistan. A group of Sub-Commission members came to Iraq in April 1990 and met officials of the National Assembly and the Ministries of Foreign Affairs, Justice and the Interior, as well as members of the Legislative Council of the Autonomous Region of Kurdistan and members of the Bar Association of Iraq. They also visited Kurdistan. Their comments can be found in the summary records of the Sub-Commission's 1990 session.

PART TWO

Information concerning the application of articles 1 to 27 of the Covenant

Article 1. Right to self-determination

11. The realization of the right to self-determination is an essential condition for the effective guarantee, observance and strengthening of individual human rights, as the Committee said in its general comment No. 12 (21). Paragraph 2 of the general comment also affirms that article 1 imposes corresponding obligations on all States parties. This right and the corresponding obligations are interrelated with other provisions of the Covenant and rules of international law. In paragraph 5 of the general comment, the Committee emphasizes inadmissibility of depriving any people of its own means of subsistence. This right entails corresponding duties for all States and the international community. Furthermore, the Committee affirms in paragraph 6 of the same comment the need for all States parties to respect the right of peoples to self-determination and refrain from interfering in the internal affairs of other States.

12. Iraq has suffered a series of grave violations of its right to self-determination as a result of the armed aggression by the anti-Iraq coalition under the cover of Security Council resolution 678 (1990), which authorized the coalition, contrary to the United Nations Charter, to use force against Iraq. This, however, is not the place to discuss the legality of that resolution or the destruction inflicted on Iraq in excess of its objectives. The war waged by the coalition against Iraq was combined with an explicit call to change the Iraqi political system; this is a systematic and deliberate violation of the Iraqi people's right to self-determination and constitutes flagrant interference in Iraq's internal affairs. These calls are still being made daily by the leaders of the coalition States.

13. Immediately after the cease-fire, on 28 February 1991, riots broke out in Iraq with support from outside the country and with the collaboration of units which crossed into Iraq. These events completed the destruction of those targets which had not been destroyed by coalition air raids. The rioters committed mass murder and rape, looting and burning schools, hospitals, shops, Government buildings, banks and courts. They stole public and private property, and fomented ethnic and sectarian conflict. All these acts are punishable by law. In spite of the extremely difficult conditions and the interruption of communications as a result of deliberate air raids, the State authorities, represented by the armed forces, did their duty and restored State control, putting an end to the riots and at last restoring peace on 5 April 1991.

14. When the State restored its authority in the governorates where riots had occurred, the rioters fled the country and induced groups of the population to go with them to neighbouring countries, particularly Turkey and Iran, by spreading untrue allegations about the action which the Government of Iraq might take against them. The idea was to use them as a human shield and for propaganda purposes holding them in the areas occupied by foreign troops and preventing them from returning home.

15. The Iraqi Government took steps both internally and internationally to repatriate the evacuees. Internally, the Revolutionary Command Council issued various amnesty decisions calling on the rioters and rebels to return to Iraq and facilitating their return: decisions No. 103 of 10 April 1991, No. 104 of 11 April 1991, No. 105 of 17 April 1991, No. 109 of 20 April 1991, No. 121 of 29 April 1991 and No. 126 of 8 May 1991. These cover all participants in the riots apart from those who committed murder, indecent assault or rape. Internationally, the Iraqi Foreign Ministry signed on 18 April 1991 a memorandum of understanding with Prince Sadruddin Aga Khan, the Executive Delegate of the Secretary-General for the United Nations Humanitarian Programme for Iraq, Kuwait and the Iraq/Iran and Iraq/Turkey Boarder Areas. The memorandum consists of 21 clauses. Clause 2 states that the Government of Iraq welcomes the efforts of the United Nations to encourage voluntary repatriation of Iraqis to their homes and the humanitarian measures to avoid the occurrence of new waves of Iraqi refugees, and pledges full cooperation and collaboration with the United Nations and its specialized agencies and programmes in this respect. In clause 3, the two sides agree that measures to be taken in favour of the evacuees should be essentially based on their personal safety and the extension of aid and humanitarian relief to them in order for them to return and resume their normal life in their homes. Clause 20 states that the implementation of the above-mentioned sentence should be without prejudice to the sovereignty, territorial integrity, political independence, security and non-interference in internal affairs of the Republic of Iraq. The last clause, clause 21, provides for the implementation of the clauses of the memorandum up to 31 December 1991 and a review of the arrangements two weeks before the expiry of this period to evaluate any need for further extension.

American-European military intervention in northern Iraq

16. Immediately upon the conclusion of the agreement between Iraq and the United Nations to help repatriate refugees, the United States started its military intervention in northern Iraq under the pretext of setting up camps for the Iraqi population who had crossed the Turkish border. The intervention started on 17 April 1991 with the collaboration of French, British, German and Dutch forces. It is a violation of Iraqi sovereignty; it constitutes an occupation of Iraqi territory, a violation of the right to self-determination and interference in Iraq's internal affairs. It also impeded the agreement concluded with the United Nations and constituted a violation of the Charter of the United Nations and the fundamental principle of sovereign equality on which the United Nations is founded as stated in Article 2, paragraph 1, of the Charter. It should be noted that Security Council resolution 688 (1991), which Iraq initially rejected, does not authorize any State to intervene militarily but calls on States to extend humanitarian assistance. United Nations General Assembly resolutions on humanitarian assistance, e.g. resolution 131/43 of 8 December 1988, affirm the need to respect the sovereignty and territorial integrity of States. The intervention adversely affects all human rights because it undermines the sovereignty of the State over parts of its territory; Iraq cannot be held responsible for any violations of human rights in the occupied territories.

Reiteration of Iraqi position on self-determination

17. Iraq reiterates the position stated in its first (CCPR/C/1/Add.45) and second (CCPR/C/37/Add.3) reports on respect and promotion of the right to self-determination and on the extension of support by all possible means to colonial peoples and liberation movements. For example, we refer to the right of the Palestinian people to self-determination and the establishment of a sovereign State on their territory, the cases of the occupied Arab territories, southern Lebanon and the Golan Heights, and the right of the people of South Africa to self-determination, independence and the abolition of the apartheid régime.

Article 3. Non-discrimination and equality of the sexes

18. Iraq has acceded to the Convention on the Elimination of All Forms of Discrimination against Women and submitted its first report on the implementation of this Convention. The report contains details of progress in Iraq's efforts to combat discrimination against women.

Article 4. The effect of the war on human rights

19. The state of war declared against Iraq by the coalition States and the subsequent riots have had a destructive effect on Iraq, threatening the life of the nation in the sense of article 4 of the Covenant. To describe the destructive effects of the war against Iraq, we may quote the report of Mr. Marti Ahtisaari, Under-Secretary-General of the United Nations, to the Security Council contained in document S/22366 of 30 March 1991. Paragraph 8 of this report says:

> "I and the members of my mission were fully conversant with media reports regarding the situation in Iraq and, of course, with the recent WHO/UNICEF report on water, sanitary and health conditions in the greater Baghdad area. It should, however, be said at once that nothing that we had seen or read had quite prepared us for the particular form of devastation which has now befallen the country. The recent conflict has wrought near apocalyptic results upon the economic infrastructure of what had been, until January 1991, a rather highly urbanized and mechanized society. Now, most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology."

Paragraph 11 of the same report states:

> "Mission members held working sessions with counterparts from the relevant ministries, visited social centres where various vulnerable groups are cared for, agricultural production areas, a seed production centre, a veterinary health centre and a dairy production unit. The mission noted that Iraq has been heavily dependent on food imports which have amounted to at least 70 per cent of consumption needs. Seed was also imported. Sanctions decided upon by the Security Council had already adversely affected the country's ability to feed its people. New measures relating to rationing and enhanced production were

introduced in September 1990. These were, however, in turn, negatively affected by the hostilities which impacted upon most areas of agricultural production and distribution."

Paragraph 13 of the report states:

"Livestock farming has been seriously affected by sanctions because many feed products were imported. The sole laboratory producing veterinary vaccines was destroyed during the conflict, as inspected by the mission. The authorities are no longer able to support livestock farmers in the combat of disease, as all stocks of vaccine were stated to have been destroyed in the same sequence of bombardments on this centre, which was an FAO regional project."

Paragraph 17 of the report reads:

"The mission had the opportunity to conduct independent research relating to household costs and living standards in Baghdad. Such standards have declined rapidly in the last months, while food and fuel prices have climbed dramatically. Price increases in the August to January period reflected shortages of supply, but since January there has been a further acceleration of price increases reflecting both supply shortages and the breakdown of the transport system. Interviews with private wholesale food distributors revealed that their stocks are near depletion and they no longer have an organized private transport capacity, owing to fuel shortages. The government-initiated rationing system was designed to provide families with a fraction of their basic necessities at prices comparable to those prevailing before August. The system allows families either 5 kilograms per person, per month, of flour or 3 loaves of baked bread; 10 kilograms per family, per month, of liquid cooking gas; 1 bar of soap per person, per month, etc. However, independent surveys conducted by the mission in several diverse areas of Baghdad showed that many families cannot draw their full rations, since the distribution centres are often depleted and they have great difficulty in travelling to other centres. The quality of food distributed has itself deteriorated to the point of causing health problems. Most families also reported that they could not meet their needs through the private markets. Despite official price controls, the independent market surveys conducted by the mission showed hyperinflation since August. The price of most basic necessities has increased by 1,000 per cent or more. For example, flour is now 5-6 dinars per kilogram (and seemingly still rising); rice has risen to 6 dinars per kilogram; sugar to 5 dinars per kilogram; lentils to 4 dinars per kilogram; and whole milk to 10 dinars. In contrast to this hyperinflation, many incomes have collapsed. Many employees cannot draw salaries, the banking system has in large measure closed down and withdrawals are limited to 100 dinars per month. The minimum monthly wage was 54 dinars and the average monthly salary of a civil servant was 70 dinars. In short, most families lack access to adequate rations or the purchasing power to meet normal minimal standards."

20. It is clear from the above that the military actions of the anti-Iraq coalition had as their objective the destruction of the economic infrastructure of Iraq, depriving the Iraqi people of their livelihood - not to mention the human lives lost as a result of the raids, in violation of the right to life provided for by article 6 of the Covenant. In our comment on article 6 we review the effects of the war on the implementation of this article. In addition to the damage to houses listed in paragraph 29 of the above-mentioned report some 9,000 houses, including 3,500 in Baghdad and houses in Basra, were destroyed or damaged beyond repair, as were communications links and bridges.

21. The State took appropriate measures to reinstate its authority in the governerates which witnessed riots. These measures were taken without prejudice to the restriction laid down in article 4, paragraph 2, of the Covenant. It should also be noted that Iraq did not declare a state of emergency, but the de facto state of war necessarily led to unavoidable measures, such as Revolution Command Council decision No. 48 of 20 February 1991 suspending all legal deadlines including the deadlines for appeals against judgements and decisions established by the Code of Civil Procedure, the Penal Code and any other law, as of 17 January 1991. The Minister of Justice was authorized to set a date for the decision to cease to have effect, and declared that 30 April 1991 would be the date for this termination. All courts effectively suspended their deliberations as of 17 January 1991 as a result of the air raids. The effects of the war and subsequent riots on the application of articles 6, 9 and 27 is reviewed below.

Article 6. The right to life

22. The first and second reports dealt with legislation relating to the right to life and capital punishment in Iraqi law and specified which courts could impose this punishment. This report follows the approach adopted by the Committee in its two general comments on article 6, Nos. 6 (16) and 14 (23), taking into account the recent events in Iraq, in accordance with the Committee's decision of 11 April 1991.

1. Violation of the right to life as a result of war

23. The second paragraphs of both general comments referred to above state that war and mass violence continue to be a scourge of humanity and take the lives of thousands of innocent people every year. Efforts by States to avoid the threat of war constitute the most important guarantee of this right. In this respect the Committee notes the link between article 6 and article 20 of the Covenant. The war launched by the anti-Iraq coalition violated the right to life of Iraqis generally and civilians in particular. We cite, as an example, the raid on Ameriyah shelter in Baghdad on 13 February 1991 which caused the deaths of 204 citizens, mostly women and children. The coalition forces also bombarded residential areas in all Iraqi towns, causing the deaths of thousands of civilians.

2. Riots and the right to life

24. A brief summary has been given above of the actions of the rioters, especially the murder of citizens collectively and individually. Three examples may be given: (a) a mass grave containing 370 bodies was discovered in Suleimania; (b) a mass grave containing the bodies of 150 people killed by rioters was discovered in Kot Sawadi on the Iraq-Iran border; and (c) a collective grave was discovered in Keshk Albasri in which 50 citizens were buried. Large numbers of people disappeared in the course of the riots, and the authorities have been unable to find them. As we have already said, military operations by the Iraqi armed forces to restore State control in the governorates where riots occurred led to the deaths of rioters and members of the Iraqi armed forces alike in exchanges of fire between the two sides. Such deaths could not be avoided in the circumstances.

3. Economic blockade against Iraq and its effect on the right to life

25. Security Council resolution 661 (1990) imposing a food blockade on Iraq constitutes a violation of human rights and international humanitarian law, particularly the Protocols additional to the Geneva Conventions which ban starving the population even in the case of war (art. 54, para. 1, of Protocol I). The Security Council has retained most of the economic sanctions against Iraq that were approved in resolution 661 (1990) in spite of the acceptance by Iraq of all Security Council resolutions and its effective implementation of many.

26. Paragraph 5 of the Committee's general comment 6 (16) states that it is desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition. The comprehensive economic sanctions against Iraq and restrictions on the importation of medicines and foodstuffs led to a serious shortage of baby milk, vaccines to control the spread of epidemics and other medicines to treat chronic diseases such as heart problems and diabetes. In January 1990, the Iraqi Ministry of Health announced the deaths of 2,042 children beccause of shortages of food and medicine. The war started in January 1991; a WHO/UNICEF mission visited Iraq between 16 and 21 February 1991. The mission inspected the tragic health conditions of children and mothers in Iraq. The report of the mission may be consulted for details of the health and nutrition conditions resulting from the war and the economic sanctions.

27. The coalition forces also deliberately raided a plant that produced milk for children in Baghdad. Media correspondents and representatives of humanitarian organizations saw for themselves the results of the bombardment, which completely destroyed the factory. This raid took place when the children of Iraq were suffering a severe shortage of milk. The result was the deaths of thousands of these children, as we said above, and the State was no longer able to meet its obligations towards children and mothers of assuring their right to life and to reducing infant mortality rates.

28. It should be noted that Iraq had seriously endeavoured to reach reasonable infant mortality rates. Infant mortality was reduced from 110 per thousand in 1980 to 94 per thousand in 1988 (see UNICEF document E/ICEF/1990/C.22).

The war, however, halted the efforts of the State and led to a violation of the right to life of children in Iraq. Recently the Ministry of Health has published statistics on the spread of cholera in Iraq as a result of war and the destruction of water, sewage and electricity facilities as well as other health establishments.

4. Legisative developments to protect the right to life since the second report

29. The most important legislative development in the area of the protection of the right to life was the abolition of the Revolutionary Court: persons who commit crimes punishable by capital punishment are brought instead before the ordinary courts, whose judgements are subject to appeal. This constitutes a reinforcement of the guarantees of the right to life contained in article 6. Further to comments made during consideration of the second report (paras. 260-266) on the right to life, and to general comment No. 6 (16), paragraph 6, inviting States to review their criminal laws in respect of the death penalty and restrict this punishment to the most serious crimes, the Iraqi authorities, as indicated in part I of this report, have undertaken an in-depth review of all the legislation made necessary by the emergency situation, which forced the State to consider as "most serious crimes" some acts that might not qualify as such under normal circumstances, since this qualification is a relative matter varying from society to society under different circumstances. Iraq fully cooperates with the Special Rapporteur on summary executions, Mr. Amos Wako, and supplies him with available information requested by him within the time-limits he establishes.

Article 7. Prohibition of torture

30. As indicated in the first and second reports, torture is prohibited under the Constitution of Iraq and constitutes a punishable act under articles 332 and 333 of the Penal Code. Article 127 of the Code of Criminal procedure states that any confession obtained under torture is null and void. During the period between the submission of the second report and this report, courts have passed judgements punishing some officials convicted of practising torture. Enclosed with this report are the following court judgements:

(a) The judgement No. 234/C/1983 of 28 January 1987 of the Misdemeanours Court in Saddam City convicting defendants under article 332 of the Penal Code;

(b) The judgement of the Court of Cassation No. 397 of 25 July 1987 reversing a judgement by which the Penal Court in De Far acquitted on 1 October 1986 a defendant in a torture case, and ordering a retrial under article 333 of the Penal Code;

(c) The judgement of the Court of Cassation No. 159 of 12 June 1988 reversing a judgement by which the Penal Court of De Far convicted on 13 February 1988 a defendant in a case of torture, and suspending execution of the sentence passed by the Penal Court. The Court of Cassation decided, upon application by the prosecution on 7 June 1988, that the sentence passed by the Penal Court was not commensurate with the gravity of the offence;

(d) The judgement No. 256 of 19 July 1989 of the Penal Court in Qadiseya Governorate acquitting a defendant for lack of evidence. The Court also noted that the defendant had already been tried for the same offence before a security court, and concluded that a defendant may not be tried twice for the same offence.

31. These court judgements as well as the right of victims of torture to obtain material and moral compensation are evidence of the implementation of article 7 of the Covenant in conjunction with article 2, as noted in paragraph 1 of general comment No. 7 (16), on article 7 of the Covenant, in which the Committee emphasized the need to provide effective redress, including compensation, to victims of torture.

32. Iraq fully cooperates with the Special Rapporteur on torture and responds to his queries.

33. The comments on article 9 of the Covenant below refer to the directive of the Ministry of Justice No. 4 of 1988 on the functions of the prosecution; clause 7 of this directive provides that a representative of the Department of Public Prosecution should investigate complaints by defendants of maltreatment and poor health conditions in detention centres.

Article 8. Prohibition of slavery

Paragraphs 1 and 2 concerning slavery and servitude

34. As stated in the first and second reports, Iraq has acceded to the international conventions abolishing all forms of slavery. In the period between the submission of the second report and this report Act No. 8 of 1988 was enacted to combat prostitution. In view of the relation between this Act and the Convention on the Elimination of All Forms of Discrimination against Women, the substance of this Act was reported in the first periodic report of Iraq.

Paragraph 3 concerning forced or compulsory labour

35. There have been no new developments on the application of this paragraph in spite of the aggression against Iraq and the destruction of its infrastructure. The Iraqi authorities have not resorted to servitude or forced labour to repair the damage but have acted in accordance with the applicable law. Changes in the treatment of prisoners are reported in our comments on article 10 of the Covenant.

Article 9. Right to liberty and freedom from arbitrary arrest

Judiciary powers of arrest

36. The first and second reports dealt with Iraqi legislation governing the protection of the right to liberty and the inadmissibility of arrest without a warrant. To ensure continuous judiciary control of arrest, based on the provisions of article 70 of the Public Prosecution Act No. 159 of 1979, and to facilitate and systematize public prosecution in the courts, the Ministry of Justice issued its directive No. 4 of 1988, published in the Official Gazette

on 11 July 1988, comprising eight articles. Article 1 makes it incumbent on investigators and police officers to notify the investigating magistrate and a member of the Public Prosecutor's Office in the district upon receiving information that a crime or offence has been committed. Article 2 requires a member of the Public Prosecutor's Office to be present during the investigation of crimes and important offences.

37. Article 3 provides that once the judge has reached a decision, the dossier is registered with the court and the judicial assistant should refer it to the public prosecutor for comment. The judicial assistant shall be responsible for failure to submit the investigation papers to the public prosecutor. Article 4 makes it incumbent on the public prosecutor to keep a record of follow-up, in which he enters decisions and action taken by the judge on the dossiers on crimes and important offences until final judgement is passed; he is required to follow up the implementation of these decisions so as to ensure speedy investigation within the specified time-limit.

38. Article 5 makes it incumbent on the public prosecutor to keep a record for the purpose of follow-up on action and decisions taken by the judge in crimes and offences, however minor, until final judgement is passed. Article 6 requires him to visit police stations in his district to follow up the implementation of articles 4 and 5, to supervise the work of investigators and police officers and to inspect detainees in these centres, making at least two visits every month to every police station.

39. Under article 7, the public prosecutor, when visiting a police station, must inspect the dossiers in possession of the investigators and police officers, give them guidance concerning these dossiers and follow up the completion of the investigation. He must also inspect arrest warrants and make sure that health conditions in the station conform to regulations, hear the complaints of detainees and record his visits in the register of the police station and in his own register. He must report on his visit to the public prosecutor in the Criminal Court.

40. Article 8 provides that the public prosecutor in the Criminal Court must undertake at least one visit a month to the prosecution offices and police stations in his district. These checks by members of the Department of Public Prosecutions answer to the intent of paragraphs 1 and 2 of the Committee's general comment 8 (16).

Riots, their effect on the implementation of article 9, and amnesty decisions

41. The rioters committed crimes punishable by Iraqi legislation, including deliberate murder, indecent assault and rape and others as mentioned above. When the State restored its authority and control in the governorates where the riots occurred, the authorities arrested rioters and those guilty of acts of destruction and sedition who had not fled to neighbouring countries. Investigation of their crimes started in accordance with established procedure. On 5 April 1991, it was officially proclaimed that the riots had ended in all parts of Iraq; the Revolutionary Command Council issued decision No. 103 of 10 April 1991 granting a general and comprehensive amnesty

to all Iraqi Kurds in the Autonomous Region, by which all acts punishable by law that were committed during the riots and disloyalty were pardoned. Crimes of murder, indecent assault, rape and theft were excluded from the amnesty.

42. The amnesty was extended to advisers and personnel of the National Defence Regiment, special detachments, armed forces and internal security forces. The decision was valid for one week, beginning on 5 April 1991, for those in Iraq, and for two weeks for those outside. The amnesty period was extended by a week by Revolutionary Command Council decision No. 104 of 11 April 1991, and by a further week by decision No. 105 of 17 April 1991. Later the Revolutionary Command Council adopted decision No. 109 of 20 April 1991, extending the general amnesty and pardon granted by decision No. 103 to all Iraqis in north, south or central Iraq for all acts committed during the riots and disloyalty, excluding crimes of murder, indecent assault, rape and theft. The decision obliged all State organs and the armed forces to extend all facilities required to implement the decision. Decision No. 121 of 29 April 1991 granted a general amensty to Iraqi Kurds for any act punishable by law that was committed during the riots and destruction, excluding murder, indecent assault and rape. This decision was in force for one month starting on 26 April 1991. Decision No. 126 of 8 May 1991 granted general amnesty to all fugitives, wherever they were, for any act punishable by law committed during the riots and destruction, excluding murder, indecent assault and rape. This decision was in force for one month starting on 26 April 1991. Under the above-mentioned decisions all rioters were pardoned except for instances of murder, indecent assault and rape. The competent authorites have started questioning those arrested before referring them to the courts for crimes not covered by amnesty decisions.

General amnesty decisions issued in the period between the second and third reports; number of defendants covered

43. In the period between the second and third reports, a number of general amnesty decisions were issued forgiving acts punishable by law. These covered some persons convicted by the courts, and they were released; it also covered defendants in various stages of investigation and trial, and proceedings against them were dropped. The following is a list of amnesty decisions and the numbers of convicted persons who benefited from them:

(a) During 1986: Revolutionary Command Council decision No. 387 of 28 April 1986; number of beneficiaries: 7,993;

(b) During 1988: Revolutionary Command Council decision No. 383 of 26 April 1988, No. 735 of 8 September 1988, No. 738 of 8 September 1988 and No. 860 of 30 November 1988; number of beneficiaries: 6,670;

(c) During 1990: Revolutionary Command Council decision No. 323 of 15 August 1990 and No. 324 of 15 August 1990; number of beneficiaries: 6,054;

(d) During 1991: Revolutionary Command Council decision No. 68 of 13 March 1991; number of beneficiaries: 658.

In all, 21,375 people benefited from these decisions, of whom 19,791 were inmates and 1,584 young detainees.

Article 10. The rights of persons deprived of their liberty

44. The second report reviewed legislation on the treatment of detainees with special reference to Act No. 104 of 1981 concerning the Public Authority for Social Reform, under which the term "prisoner" was changed to "inmate" in the case of adult convicts and "young detainees" in the case of juvenile convicts. Since then, Act No. 8 of 1986 has amended article 20 of Act No. 104 of 1981 on the organization of the labour of inmates and young detainees. Under this amendment the labour of inmates and young detainees has been organized as follows:

(a) The labour of inmates and young detainees in social reform institutions is to be organized so as to ensure that conditions of work are comparable to conditions outside in respect of type of work, manner of performance, and types of tools and instruments used;

(b) Inmates and young detainees may work outside the Public Authority for Social Reform in accordance with the following guidelines:

(i) The departments of adult reform and juvenile reform in the Public Authority for Social Reform will enter into contracts with government authorities requiring manpower in their projects in line with the basic principles, controls and directives adopted by the Board of Management of the Authority;

(ii) The provisions of the Labour Act No. 151 of 1970 concerning working hours, rest, leave and holidays will apply to inmates and young detainees working in or outside social reform institutions;

(iii) Laws, regulations and directives on wages and working hours will be respected in the case of those employed in administrative or technical functions other than those covered by the Labour Law;

(iv) Inmates and young detainees cited in (ii) above are covered by the Retirement and Social Security Act (the chapter on work-related injuries);

(v) The employer will pay 2 per cent of the inmate's or young detainee's wage into the account of the Work-Related Injury Branch and all sums will be credited to the Public Authority for Workers' Retirement and Social Security;

(vi) Inmates and young detainees may work outside the Public Authority for Social Reform in government offices if their sentences are of less than five years and they have served at least 10 per cent of their sentences in social reform institutions. Inmates and juvenile detainees with sentences of over five years may work outside the Authority if they have already served 25 per cent of their sentences in social reform institutions.

Act No. 8 of 1986 also amended Act No. 104 of 1981 by excluding inmates with sentences of less than five years from the conditions laid down in article 35 of the earlier Act for granting home leave. These conditions were reported in the second report.

Practical measures for the treatment of inmates and young detainees

45. Practical measures applied in prisons by the Public Authority for Social Reform for the treatment of inmates and young detainees in application of Act No. 104 of 1981 and its amendments include the following:

(a) Reforming inmates and juvenile detainees by rehabilitating them vocationally and educationally as well as behaviourally;

(b) Providing them with culture and awareness through national and religious cultural programmes;

(c) Investigating their family circumstances and supplying material and moral support to protect their families against delinquency;

(d) Collaborating with relevant authorities and crime prevention measures;

(e) Granting home leave to inmates and young detainees four times a year in accordance with the conditions established by law to maintain the link with the family and with society through the family;

(f) Granting special home leave to creative inmates;

(g) Educating inmates and young detainees by giving them the opportunity to read newspapers, magazines and books and by organizing cultural seminars and meetings;

(h) Allowing inmates and young detainees to see their families three times a month in addition to the meetings allowed on religious and national holidays;

(i) Ensuring adequate health conditions for inmates and young detainees by providing them with free medical treatment and ensuring cleanliness, ventilation, adequate lighting and daily food rations which meet nutritional requirements in terms of both quantity and quality;

(j) Allowing inmates and young detainees to lodge complaints or protests against maltreatment or any offence against them;

(k) Permitting inmates and young detainees to receive education and to continue their studies in schools in or outside the reform institutions;

(l) Allowing inmates and young detainees to work in accordance with their qualifications and abilities through training and vocational programmes in order to qualify them to earn their living after completing their sentences.

All these practical measures are in keeping with article 10 of the Covenant and the Committee's general comment 9 (16).

Article 12. The right to freedom of movement and residence and to leave the country

46. The exceptional circumstances arising from the armed conflict led to the imposition of restrictions on travel by Iraqi citizens for purposes of tourism. A decision authorizing such travel was issued on 17 January 1990, then restrictions were reimposed on 2 August 1990 following the Kuwait crisis. A new decision was issued authorizing Iraqi citizens to travel as of 15 May 1991.

Article 14. The right to appear before the courts

47. The first report reviewed the legislative provisions that guarantee the right to appear before the courts, notably the rights of litigants before the courts in accordance with the Code of Criminal Procedure and the Code of Civil Procedure and in particular the right to defence before criminal courts and the obligatory presence of a lawyer for the accused in criminal proceedings. The second report outlined the developments related to support of the judiciary. In the present report, we will deal with legislative developments in the role of the judiciary in protecting the rights of litigants in criminal and civil cases.

1. Measures in support of the judiciary

48. Several laws have been issued aimed at strengthening the judiciary through scholarship and providing material and moral support for judges.

(a) Under Revolutionary Command Council decision No. 58 of 17 January 1988, a retired judge with experience and competence may be reinstated in the judiciary if he so wishes, unless he retired for health reasons or his service was terminated for any reason.

(b) Under Revolutionary Command Council decision No. 65, issued on 18 January 1988, a judge, in addition to his salary and the benefits provided for by law, is granted the following monthly benefits:

- 100 dinars for fourth category judges;

- 150 dinars for judges of the second and third categories;

- 200 dinars for first category judges.

(c) Revolutionary Command Council decision No. 313, of 2 April 1988, stipulates that a judge shall not be promoted to a higher category unless he submits a study of benefit to justice and the law and contributes something new to the field.

49. Judges who graduate from the Legal Institute are required to present the aforementioned study three years after their appointment. If they fail to do so, they shall be given a six-month extended deadline. If they do not produce the requisite study they shall be removed from the judiciary and found work outside the Ministry of Justice. These measures support judges and concentrate on the role of legal scholarship in their promotion, in addition to providing them with material support which helps to strengthen their role as upholders of the rights of litigants.

2. Extension of the powers of the Public Prosecutor and possible appeal in the interests of the law in civil cases

50. During the reporting period, two important amendments were issued to Public Prosecution Act No. 159 of 1979.

(a) Under the first amendment, promulgated by Act No. 5 of 7 January 1987, article 30 of the Public Prosecution Act was amended as follows:

(i) The Director of Public Prosecutions shall, subject to the law and regulations, take action or cause action to be taken to avoid breach or violation of the law;

(ii) If the Director of Public Prosecutions learns that a breach of law has occurred in any sentence or judgement by any court other than a criminal court which would be detrimental to the national interest or State property or would constitute a breach of public order, he shall appeal against the sentence or judgement in the interests of the law, irrespective of the expiry of any legal deadline, if none of the interested parties has already done so;

(iii) Appeal in the interests of the law may not be made if three years have elapsed since the sentence or judgement became definitive;

(iv) Appeals in the interests of the law shall be made before the Court of Cassation, and shall be considered by a five-member body presided over by the president of the Court or one of his deputies. If the sentence or judgement is found to be in breach of the law, it shall be overturned and the case shall be returned to the original court for issue of a new sentence or judgement; the new sentence or judgement shall automatically be referred to the Court of Cassation for consideration by the five-member body, whose decision shall be binding and not subject to appeal.

(b) Under the second amendment, promulgated by Act No. 15 of 27 January 1988, several articles of Public Prosecutions Act were amended; the most important of these articles are the following:

(i) Article 9 requires the presence of a public prosecutor at the hearings of criminal courts other than the Court of Cassation. The public prosecutor has the right to cross-examine witnesses and experts and put questions to the accused; he may petition the court for release, conviction, indictment or acquittal of the accused, for the accused to be found not competent to stand trial, for the charges to be dropped, or for a discharge in accordance with the law. The public prosecutor may present comments to the criminal court, when it is in session as an appellate court, in order to express its opinion on the appeals made against judgement, sentences and measures;

(ii) Article 16 was amended to enable the Juvenile Court to refer to the Director of Public Prosecutions criminal cases considered by that Court;

(iii) Article 28 was also amended to enable the Director of Public Prosecutions to examine cases received from criminal courts and juvenile courts and submit his comments and requests to the Court of Cassation within 30 days.

51. The Court of Cassation in Iraq has issued several decisions on appeals by the Public Prosecution in the interests of the law. In the considered opinion of the Court, what is meant by a breach of law is a violation of law which would be detrimental to the national interest, State property or public order (Court of Cassation decision No. 30 of 1 July 1988). The Court has also ruled that appeals in the interests of the law cannot be entertained if the judgement under appeal relates to personal rights (Court of Cassation decision No. 39 of 17 December 1988).

3. Administrative Causes Court

52. Act No. 106 of 2 December 1989 was promulgated as an amendment to the State Council Act No. 65 of 1979. The most important provision of this amendment is the establishment within the State Council of a court called the Administrative Causes Court, headed by a judge of the first category or a member of the State Council, with two other members who shall be judges of the second or higher category.

53. The Administrative Causes Court considers the validity of administrative orders and decisions made by officials and organs of the State and the socialist sector since the Act took effect for which no appellate body has been designated, in response to an appeal from a party with an attested, immediate and plausible interest. A plausible interest, however, shall suffice if there are grounds to fear that the interested parties might suffer loss. The grounds for appeal shall include the following:

(a) That the order or decision involves a breach or violation of law, regulations or directions;

(b) That the order or decision was issued ultra vires or not in due form;

(c) That the order or decision entails an error in the application or interpretation of laws, regulations or directions, or involves a misuse or abuse of authority.

Decisions and orders that may be appealed against include refusal by officials or organs of governmental departments to make a decision or order which should legally have been made. Before an appeal is lodged with the Administrative Causes Court, the appellant should appeal to the competent administrative organ, which must rule on the appeal as required by law within 30 days from the date on which the appeal is lodged. If no ruling is given or the appeal is rejected, the Administrative Causes Court will put the case on its register.

54. The appellant must lodge his appeal with the Court within 60 days of the expiration of the 30-day time-limit, or forfeit his right to appeal. Failure to enter an appeal does not preclude review by the ordinary courts of his claims for compensation for damage resulting from the violation or breach. The procedures of the Court are governed by the Code of Civil Procedure.

55. The Court rules on the appeals submitted to it: it may decide to reject the appeal, or to repeal or amend the order, or to repeal the decision and award compensation. Its decision is subject to appeal en cassation at the General Board of the State Council within 30 days after its decision has been, or is deemed to have been, communicated to the parties. An uncontested ruling by the Court or the decision of the General Board of the State Council on appeal is definitive and binding.

56. Annexed to the present report are some examples of judgements issued by the Administrative Causes Court against governmental departments. These judgements are:

(a) Decision No. 26 of 26 May 1990 against the Ministry of Education, rescinding an order issued by the Department of Secondary Education and designating the academic year 1987-1988 a "non-failure year" in respect of the student concerned;

(b) Decision No. 46 of 25 August 1990 against the Governor of Baghdad, rescinding a decision not to grant a building owner a permit in view of the physical condition of the building, and ordering the defendant to issue the necessary permit;

(c) Decision No. 53 of 19 September 1990 against the Ministry of Higher Education and Scientific Research, revising the contested decision, extending the plaintiff's study period to the end of the academic year 1989-1990 or to the date on which he receives his diploma, whichever is earlier, and authorizing the transfer abroad of the payment;

(d) Decision No. 95 of 24 November 1990 against the Ministry of Transport and Communications, requiring the Ministry to restore the plaintiff's telephone service.

These decisions constitute the beginnings of modern administrative justice in Iraq, and will undoubtedly help to protect the rights of citizens.

4. Dissolution of the Revolutionary Court after limiting its powers

57. On 19 May 1991, the Revolutionary Command Council issued decision 140, which provided for the dissolution of the Revolutionary Court. The decision required the Presidential Cabinet to wind up the affairs of the Revolutionary Court and send back all cases referred to it to the legal department of the Presidential Cabinet which would assign them to the competent courts for due consideration. This decision was issued during a review of the procedures necessitated by the country's exceptional circumstances, and in support of the role of the Iraqi judiciary in exercising its legal powers.

58. On 27 March 1990 the Revolutionary Command Council issued decision No. 150, limiting the powers of the Revolutionary Court. Under this decision the Revolutionary Court was limited to rendering judgement in the following instances:

(a) Crimes against the internal and external security of the State as provided for in articles 156 to 222 of the Penal Code;

(b) Crimes provided for in the Punishment of Foreign Secret Agents Act No. 141 of 1974, as amended;

(c) Crimes against the authority of the State provided for in articles 223 to 225 of the Penal Code;

(d) Drug-trafficking offences covered by article 14 of the Drugs Act No. 68 of 1965, as amended;

(e) Crimes committed by fishermen using poison, which are punishable under Revolutionary Command Council decision 1578 of 11 October 1980;

(f) Desertion from military service, which is assimilated to political crimes against the internal and external security of the State;

(g) Other crimes as provided by law or referred by the President to the Revolutionary Court.

Article 18. Right to freedom of thought, conscience and religion

59. As mentioned in the first and second reports, Iraq is constitutionally committed to respect the freedom of thought, conscience and religion for all religions and communities without any discrimination. Iraq continues to look after the welfare of religious communities and support them by various material and moral means. The Ministry of Awqaf (Mortmain) and Religious Affairs continues to look after the welfare of religious communities in implementation of Ordinance No. 32 of 1981 on the welfare of religious communities. Such support and care by the aforementioned Ministry during the reporting period may be divided into two categories:

1. Support related to religious and theological studies

60. The Ministry has taken the following measures:

(a) Establishment of institutes and monasteries specializing in religious studies for the purpose of graduating priests and monks in Baghdad and Mosul for all religious sects;

(b) Dispatch of a large number of students to specialize in religious studies in institutes and universities in Syria, Lebanon, Egypt, France, Italy, the United States and the Soviet Union;

(c) Dispatch of priests and monks to earn higher diplomas in theology, clerical law and the Holy Bible in European universities;

(d) Approval of travel by chiefs of communities and priests to attend religious meetings and conferences and deliver lectures in foreign universities, excluding them from the travel prohibition which was in effect before 15 May 1991;

(e) Support of the publication of two religious magazines, the first in Mosul, entitled Christian Thought, and the second in Baghdad, entitled Between the Two Rivers, dealing with the Christian heritage in ancient and modern Iraq;

(f) Support for the import into Iraq of holy books and gospels for the benefit of religious communities.

2. Support related to church construction, furnishing and renovation

61. In this sector, the following measures have been taken:

(a) Exemption from customs duties of materials donated to churches from abroad;

(b) Exemption of all churches, places of worship and monasteries from charges for the supply of water and electricity;

(c) A gift from the President of the Republic to the churches of 25 organs imported from Italy, 18 of which have been distributed to churches (the rest were detained in Italy following Security Council resolution 661 (1990));

(d) The Ministry of Awqaf (Mortmain) and Religious Affairs has contributed to the construction, furnishing and renovation of the following churches and places of worship:

(i) Construction of St. Zayya church in Baghdad (Al-Dorah district) for the Assyrian Nestorian community at a cost of half a million dinars;

(ii) Construction of an archbishopric headquarters and a hall and church for the Assyrian Catholic community in Al-Riyadh-Baghdad at a cost of 430,000 dinars;

(iii) Construction of St. Korkis church for the Assyrian Catholic community in the village of Sharqiyah near Al-Qosh (Nineveh), at a cost of 150,000 dinars;

(iv) Construction of an archbishopric with two apartments and a church in the Noor neighbourhood in Mosul in the name of the Virgin for the Assyrian Catholic community at a cost of half a million dinars;

(v) Construction of St. Korkis church in Basra for the Assyrian Nestorian community at a cost of 54,000 dinars;

(vi) Contribution of 50,000 dinars to the construction of St. Joseph church in the district of Tellkayf, Nineveh Governorate, for the Assyrian Nestorian community;

(vii) Renovation of the Syrian Catholic church in Basra, the church of the Virgin Mary in Sinjar for the Syrian Orthodox community and the church of the Virgin Mary for the Syrian Orthodox community in Basra, which suffered damage from shelling;

(viii) Renovation and furnishing of the Chaldean Archbishopric in Al-Qosh and the church of Mary Mother of Sorrows in the Maysan Governorate;

(ix) Allocation of 700,000 dinars to the restoration of St. Behnam Monastery near Mosul for the Syrian Catholic community;

(x) Allocation of 700,000 dinars to St. Michael Monastery near Mosul for the Chaldean community;

(xi) Allocation of 298,000 dinars to the restoration of St. Hirmiz Monastery for the Chaldean community in Al-Qosh commune, Nineveh Governorate;

(xii) Land was allocated free of charge to all religious communities to be converted into modern cemeteries. Such land was also allocated to all communities for the construction of churches or places of worship in areas where communities possess no land.

62. Such support helps churches and places of worship to exercise their religious activities and strengthens the freedom of thought, conscience and religion in accordance with article 18 of the Convenant. Iraq cooperates with, and replies to inquiries by, the Special Rapporteur to the Commission on Human Rights on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Article 19. Freedom of opinion and expression

63. The first report reviewed provisions on freedom of opinion and expression. Iraq, in the context of eliminating restrictions dictated by exceptional circumstances, is in the process of formulating a new press law, with the participation of the press association, which would promote and uphold freedom of opinion and of the press within the framework of intellectual and political pluralism. The Ministry of Culture and Information has eliminated all kinds of restrictions formerly imposed on reports sent out of Iraq by correspondents of foreign newspapers and news agencies. The compulsory registration of copying machines was abolished with the elimination of restrictions on civic freedoms.

Article 20. Prohibition of war propaganda and incitement to national, racial and religious hatred

64. War is an act prohibited by international law. In the first and second reports, Iraq affirmed its position on war and condemned acts of violence.

Iraq was the victim of a war waged by 30 States known as the anti-Iraq coalition under the pretext of Security Council resolution 678 (1990), which violates the Charter of the United Nations, setting a dangerous precedent by applying international law selectively and according to a double standard. The war brought economic destruction to the country, seeking to destroy it politically through interference in its internal affairs and incitement to national, racial and intercommunity hatred among the Iraqi people, and to infringe upon its territorial unity and break up its national unity, in order to have political domination over it. This constitutes a violation of article 20 of the Covenant, the subject of the present report.

65. Here we would like to point to the role played by the Western media in urging war against Iraq and inciting national hatred and intercommunity sedition, contrary to the UNESCO Declaration of 28 November 1978 on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, especially article 3 thereof. The mass media contributed to an orchestrated campaign against Iraq which paved the way for war, resulting in the destruction of its infrastructure and interrupting the promotion of human rights.

Article 22. Right to freedom of association and to form trade unions

66. An important legislative development in the right to freedom of association and to form trade unions was Revolutionary Command Council decision No. 9 of 3 January 1988, which makes membership of professional federations, trade unions, associations and clubs optional. The decision abolished all current laws, regulations and directives making membership of such organizations compulsory, and all material and moral implications of the requirement to belong to such organizations. All laws related to associations, trade unions and professional federations were amended in accordance with decision 9 mentioned above so as to make joining these organizations optional rather than compulsory.

Article 23. Right to marry and to found a family

67. In view of Iraq's accession to the Convention on the Elimination of All Forms of Discrimination against Women, Iraq's first report on the implementation of this Convention provided detailed information on the right to marry and found a family and on non-discrimination between spouses. Legislative and operational details may be found in that report.

Article 24. Rights of the child and right to acquire a nationality

68. The first and second reports and Iraq's report on the implementation of the International Convenant on Economic, Social and Cultural Rights, especially article 10 thereof, contain detailed information on State child care in Iraq. The competent authorities are considering Iraq's accession to the Convention on the Rights of the Child, adopted by the General Assembly in 1988. Mention should be made of the destructive effects of the war and economic sanctions imposed on Iraq on the ability of the State to carry out its responsibilities vis-à-vis children, the group most affected by the war, as has been mentioned in Part I and under article 6.

Article 25. Right to take part in public affairs

69. The second report reviewed provisions related to the right of citizens to take part in public affairs through the National Assembly and the Legislative Council of the Autonomous Region. Some of these provisions have been amended in order to strengthen the authority and power of these bodies.

1. Major amendments to the National Assembly Act and activities during the reporting period

70. The major amendments to the National Assembly Act No. 55 of 1980 during the reporting period dealt with the Assembly's competence to examine electoral contests, inspect governmental departments and question Ministers.

(a) The Assembly's competence to examine electoral contests

71. Article 51 of the National Assembly Act was amended by Act No. 23 of 1990 as follows:

(i) The National Assembly shall rule on challenges to the validity of the election of its members. Members shall be suspended by a decision taken by a two-thirds majority of its members;

(ii) The National Assembly shall establish the good standing of any of its members in a public session to be held after the results of elections are announced and before considering any item on its agenda as follows: any member of the Assembly may, within 15 days after the results of elections are announced, submit written or oral information challenging the good standing of any of its members.

Any Iraqi citizen may, within 15 days after the results of elections are announced, challenge the good standing of any member of the National Assembly. Any such challenge shall be referred to the Director of Public Prosecutions, who shall make a recommendation thereon to the National Assembly within 15 days following the date on which the challenge is referred to him. The National Assembly shall rule on challenges to the good standing of any of its members in accordance with its Rules of Procedure. If the Assembly determines that the challenge is not well-founded, that it is based on false information or is malicious, the President of the Assembly shall refer the challange to the competent court of inquiry so that legal action can be taken against those responsible.

(b) Competence of the Assembly to advise the President of the Republic, inspect governmental departments and summon the Prime Minister and Ministers

72. Article 47 of the National Assembly Act was amended by Act No. 11 of 1987, which added the following item:

"(b) The National Assembly may, of its own accord, advise the President of the Republic on any issue it deemds appropriate after the issue has been considered by the Standing Committees of the Assembly or by the Presidential Board, or has been submitted to the Assembly."

73. By Revolutionary Command Council decision No. 115 of 31 January 1988, the National Assembly Act was amended as follows:

"(a) The National Assembly and its specialized committees may:

(i) Inspect, fully or partially as circumstances require, organs of the State and the socialist sector, by such means as they may deem appropriate;

(ii) Summon and question the Prime Minister, Ministers and any State official for questioning about any matter requiring classification or elucidation of the truth;

(b) The Assembly may, in the light of its findings, recommend such action as it may deem appropriate against persons held liable for the matter under investigation, including withdrawal of confidence, dismissal, obligatory retirement or referral to the competent courts so that they can answer for their actions in accordance with the law."

2. Elections held since the second report and activities of the National Assembly

74. The third National Assembly elections were held on 1 April 1989. There were 921 candidates, 861 men and 60 women, for 250 seats. Of the 250 members elected, 27 were women. The Assembly held its legislative sessions in accordance with Act No. 55 of 1980 as amended and the Assembly's Rules of Procedure. Between 1986 and the preparation of this report, the Assembly considered 121 bills, approved 114 and rejected 7.

3. The Legislative Council of the Autonomous Region of Iraqi Kurdistan

75. The second report reviewed provisions regulating the Legislative Council. Some amendments have been issued to Act No. 56 of 1980, the most important of which was Act No. 2 of 1990, which amended article 57 of the Act by inserting the following third paragraph: "The National Assembly shall rule on challenges to the validity of the election of its members. Members shall be suspended by a decision taken by a two-thirds majority of its members." The Legislative Council elections were held during its session of 2 September 1989, and its legislative session was held on 22 September 1989. The Legislative Council exercised its powers in accordance with the Autonomous Region Act and Act No. 56 of 1980. Reference is made to details given under article 27 on autonomy and in the tenth periodic report on the implementation by Iraq of the Convention on the Elimination of Racial Discrimination.

Article 27. Right of persons belonging to minorities

76. The first and second reports showed to what extent Iraq is committed to the principle of non-discrimination among citizens as a constitutional basis for dealing with minorities. Iraq not only does not deny persons belonging to minorities the right to enjoy their own culture, to profess and practise their own religion, or to use their own language, as provided for in article 27 of the Covenant, but also pursues positive measures in order to enable minorities to exercise their rights without discrimination.

77. With respect to religious minorities, we refer to the comments under article 18 of the Covenant about State support for religious minorities. Linguistic minorities, especially the Turkmen and Syriac-speaking Assyrian and Chaldean minorities, enjoy their own cultural rights with material and moral support from the State, as was mentioned in the first report.

78. The national Kurdish minority is considered a part of the Iraqi people in accordance with article 5 of the Constitution. Kurdish Iraqi citizens were granted autonomy in 1974 in accordance with the statement of 11 March 1970. Full details of the autonomy enjoyed by Iraqi Kurdistan are given in the second report, in addition to information in the ninth periodic report on Iraq's implementation of the Convention on the Elimination of All Forms of Racial Discrimination. Elections to the Legislative Council for a three-year term were held in September 1989. The Executive Council was established by presidential decree No. 473 of 23 September 1989. Elected representatives of the Autonomous Region sit in the National Assembly, which has been described above under article 25 of the Covenant.

79. In the second report we affirmed that two basic considerations guided Iraq's promotion of the rights of minorities: first, that minority rights are intended to give effect to the principle of non-discrimination among citizens, whatever their national, religious or linguistic affiliation, rather than grant exclusive privileges to a certain group; and second, that the sovereignty of the country and its territorial unity and integrity must be respected, and there must be no interference in its internal affairs. This is emphasized in all international instruments on the rights of minorities, including the declarations of the World Conferences against Racism and Racial Discrimination held in Geneva in 1978 and 1983, and the draft declaration on the rights of indigenous populations, which has been under study by the drafting group of the Commission on Human Rights since 1978.

80. What Iraq had warned against has happened. The subject of minorities is approached by some influential States at the United Nations from a selfish political viewpoint aimed at political exploitation of the subject of minorities in the third world, in order to fragment the third world into tiny sectarian or ethnically-based States. Iraq has been made a target of this distorted approach to the protection of minority rights in order to interfere in its internal affairs.

81. Part I of this report outlines attempts to threaten Iraq's territorial integrity and unity and interfere in its internal affairs under the pretext of humanitarian assistance. Iraq's starting point in dealing with such attempts has been its serious desire to cooperate with the United Nations in solving the humanitarian problems resulting from the exodus of Kurdish citizens, as stated in Part I.

82. The present report reviews, below, developments affecting Kurdish Iraqi citizens in the Autonomous Region and action taken by the Iraqi Government to deal with problems resulting from the armed conflict with Iran in 1988, the war waged by States of the anti-Iraq coalition in 1991 and the disturbances that followed.

1. Complications resulting from the armed conflict with Iran after the cease-fire of August 1988

83. During the armed conflict between Iraq and Iran, Iranian forces occupied some Iraqi territory in the Autonomous Region of Kurdistan, thanks to the collaboration of some Kurdish leaders. When Iraqi forces regained the occupied positions and a cease-fire was declared on 8 August 1988, these leaders felt frustrated and isolated. They, therefore, induced the civil population to leave for Turkey under various pretexts in order to use the exodus to put political pressure on Iraq.

84. The State honoured its responsibility to protect Kurdish citizens. The Revolutionary Command Council issued a statement calling on Kurdish citizens to return home. This was followed by a general and comprehensive amnesty for Iraqi Kurds, issued by Revolutionary Command Council decision No. 736 of 8 September 1988, which stated:

(a) Iraqi Kurds covered by the Revolutionary Command Council statement of 6 September 1988 shall be granted a general and comprehensive amnesty, excusing them from the consequences of and prosecution for any act punishable by law committed before the date of the Revolutionary Command Council statement, whether they be outside or inside Iraq. Excluded from this amnesty shall be those who committed murder directly and those who stole other people's property. To qualify for such an amnesty, those who are outside Iraq shall have to return home within 30 days after the date of this decision, after which they will be authorized to go abroad again if they are engaged in an activity, studies or the like, which they want to pursue.

(b) Kurds sentenced or in custody shall be granted a general amnesty; their files shall be closed and they shall be released immediately, if they have not been sentenced or are not in custody in connection with cases other than those set forth in the Revolutionary Command Council statement of 6 September 1988. Those sentenced for murder or stealing shall be excluded.

85. The Revolutionary Command Council then issued decision No. 860 of 30 November 1988, guaranteeing general and comprehensive amnesty to fugitives and those convicted on political grounds, including Kurdish citizens. This was followed by another general amnesty under Revolutionary Command Council decision No. 130 of 28 February 1989, granting amnesty to Iraqi fugitives abroad.

86. A new general amnesty was then issued for Iraqi Kurds under Revolutionary Command Council decision No. 140 of 14 March 1990, providing for definitive suspension of legal proceedings against those covered by the amnesty for all crimes, provided that they returned home while that decision was still in effect, i.e. until 11 May 1990. Excluded from the provisions of this decision were the crimes of murder and stealing and crimes unrelated to the hostilities in northern Iraq.

87. The Revolutionary Command Council then issued decision No. 164 of 2 April 1990, granting amnesty to those covered by amnesty decision nos. 860, 130, 238 and 140 for the crimes of not reporting for military service and deserting. In accordance with these decisions and the facilities granted to

Iraqi Kurdish citizens, civilians returned to their cities and villages to live in peace. Meantime, the central Iraqi Government and Autonomous Region authorities intensified efforts to reconstruct Iraqi Kurdistan with all its infrastructure.

2. Complications resulting from riots in northern Iraq after the cease-fire in the Gulf War in March 1991

(a) Effects of the war launched by States of the anti-Iraq coalition on 17 January 1991 and destruction of infrastructure in Iraq

88. After the suspension of military operations on 28 February 1991, riots broke out in the Autonomous Region, directed from outside Iraq and aimed at the destruction, looting and burning of public and private property and the killing of citizens who opposed the riots or disobeyed orders by the rebels to leave their homes.

89. Under article 1 of the Covenant, we have outlined the events which led to the exodus of Iraqi Kurds to Turkey and Iran. We have also mentioned the agreement signed between the United Nations and the Iraqi Government to facilitate voluntary repatriation of those who had left and the American and European intervention in northern Iraq, which is contrary to international law and constitutes a violation of the right of people to self-determination and interference in Iraq's internal affairs. The Iraqi armed forces did their duty and restored the authority of the State and the judiciary on 5 April 1991. As in 1988, the civil population was subjected to intimidation and rumours were spread to induce them to leave for Turkey.

90. Iraq acted responsibly and seriously to deal with the exodus. In addition to signing a memorandum of understanding with the United Nations, it declared a general amnesty in the following decisions regarding Iraqi Kurds:

(a) Revolutionary Command Council decision No. 103 of 10 April 1991, guaranteeing a general and comprehensive amnesty to Iraqi Kurds in the Autonomous Region, excusing them from the consequences of and prosecution for any act punishable by law committed during the rioting and disloyalty. Excluded from this amnesty were crimes of murder, indecent assault and rape, and stealing. The amnesty covered the advisers and personnel of the national defence regiments, the personnel of special detachments and members of the armed forces and internal security forces. The decision took effect as of 5 April 1991 for one week if they were inside Iraq and for two weeks if they were abroad. The time-limit was extended by a week under Revolutionary Command Council decision No. 104 of 11 April 1991, and until 26 April 1991 under decision No. 105 of 17 April 1991.

(b) On 29 April 1991, the Revolutionary Command Council issued decision No. 121 granting Iraqi Kurds a general and comprehensive amnesty, excusing them from any consequences of or legal prosecution for any act punishable by law committed during the rioting and destruction. Crimes of murder, indecent assault and rape shall be excluded. This decision took effect with respect to those covered by it for one month as of 26 April 1991. Most civilians have returned to Iraq as a result of the action taken by the Iraqi Government in cooperation with the United Nations and its specialized agencies.

(b) Dialogue between the Iraqi political leadership and a delegation of Kurdish parties

91. In view of Iraq's conviction that dialogue can resolve all problems, and after the statement of March 1970 was issued as a result of dialogue between the political leadership and the Kurdish parties, there began in April 1991 a series of dialogue meetings between the Iraqi political leadership and a delegation of Kurdish parties aimed at enhancing the autonomy of Iraqi Kurdistan. Members of the Committee will be informed of the results of the dialogue when this report is discussed.

Conclusion

92. Iraq's third periodic report on the implementation of the International Covenant on Civil and Political Rights portrays the factual situation of human rights in Iraq, progress made in their realization and difficulties encountered. The submission of this report in the difficult and exceptional circumstances prevailing in Iraq is proof of a determination to pursue the dialogue with the Committee with a view to the better implementation of the Covenant.

93. Iraq would like to stress the importance of the coordinated application of the rules of international law, including those on human rights, in an objective and non-partisan manner. Iraq cannot fulfil its responsibility to implement the International Covenant on Civil and Political Rights in the face of a systematic and deliberate violation of its right to self-determination, interference in its internal affairs and the denial to its people of their means of livelihood by means of a continued unjustifiable economic embargo, because human rights, whether economic, social and cultural or civil and political, are indivisible.

94. We would like to quote a statement made by President George Bush to reporters at the White House on 21 May 1991. He said "at this juncture, my view is we don't want to lift these sanctions as long as Saddam Hussein is in power." (International Herald Tribune, 22 May 1991). Mr. Bush's statement echoed a similar statement by the British Prime Minister, John Major, to his Conservative Party on 11 May 1991. Mr. Major said Britain might veto any move in the Security Council to lift sanctions as long as Mr. Hussein was in power. At the White House, Mr. Fitzwater referred to a 7 May speech by the deputy national security adviser. Mr. Fitzwater said Mr. Gates' strong formulation on the sanctions question represented American policy. In his speech to the American Newspaper Publishers Association, Mr. Gates, who has been nominated by President Bush to be Director of the Central Intelligence Agency, said, referring to Mr. Hussein, "Iraqis will pay the price while he is in power."

95. These statements confirm a deliberate intention to deny the Iraqi people its own means of livelihood, interfere in Iraq's internal affairs and attempt to impose on it a political order. This is unprecedented in the history of the United Nations, and makes it essential for the international community to shoulder its responsibilities.

96. In conclusion, we hope that the discussion of the present report will provide an auspicious occasion for a positive and thorough dialogue based on the interrelated rules of international law rather than on preconceptions.

ANNEX

List of judicial decisions relevant to Iraq's third periodic report on the International Covenant on Civil and Political Rights

1. Misdemeanours Court decision in Saddam City, No. 234 of 28 January 1987

2. Court of Cassation decision No. 397 of 25 July 1987

3. Opinion and comments by the Director of Public Prosecutions of 7 June 1988

4. Court of Cassation decision No. 1590 of 22 June 1988

5. Administrative Causes Court decision No. 26 of 26 May 1990

6. Administrative Causes Court decision No. 46 of 25 August 1990

7. Administrative Causes Court decision No. 53 of 19 September 1990

8. Administrative Causes Court decision No. 95 of 24 November 1990

The decisions mentioned above will be sent with the delegation attending the discussion of the report and will be available for consultation in the files of the secretariat.